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## OPINION OF TRUSTEES

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### In Re

Complainants: Two Employees  
Respondent: Employer  
ROD Case No: 81-61 - December 19, 1983

Board of Trustees: Harrison Combs, Chairman; John J. O'Connell, Trustee; Paul R. Dean, Trustee.

Pursuant to Article IX of the United Mine Workers of America 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning the provision of health and other non-pension benefit coverage for two Employees laid-off by the Employer and hereby render their opinion on the matter.

### Background Facts

The Complainants had worked for the Employer for at least five (5) years up to March 1, 1982, when all of the Employer's classified Employees were laid-off. On March 2, 1982, all of the laid-off Employees were mailed mine panel forms by the Employer. The completed forms were returned to the Employer on or before March 8, 1982, by all the employees except the Complainants.

The first Complainant claimed that he received the panel form on March 8, 1982, and personally returned the completed form to the Employer on March 12, 1982. The second Complainant claimed that he received the panel form on March 10, 1982 and that he personally returned it to the Company on March 15, 1982. Both Complainants live within four miles of the mine. Inasmuch as neither Complainant's panel form was received by the Employer within the time provided in the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1981, the Employer considered them to have quit their employment. Subsequently, their health and other non-pension benefit coverage was cancelled effective March 31, 1982.

The first Complainant had worked 2,031 hours for the Employer during the 24-month period immediately prior to the lay-off and the second Complainant had worked 1,790 hours:

Both Complainants filed grievances which were submitted to arbitration. On June 7, 1982, the arbitrator ruled that the Complainants, by not submitting timely panel forms, forfeited their seniority rights and that their names were not to be included on the mine panel.

Dispute

Is the Respondent responsible for the provision of health and other non-pension benefits coverage For the Complainants based on the number of hours worked by the Complainants for the Employer prior to their last date worked?

Position of the Parties

Position of the Complainants: The Complainants feel that they are eligible for continuation or coverage commensurate with their hours worked.

Position of the Employer: The Complainants are not eligible for benefit coverage because they quit their employment.

Pertinent Provisions

Article I (1),(2) and (4) of the Employer's Benefit Plan provides:

Article I - Definitions

The following terms shall have the meanings herein set forth:

- (1) "Employer" means (coal company)
- (2) "Wage Agreement" means the National Bituminous Coal Wage Agreement of 1981, as amended from time to time and any successor agreement.
- (4) "Employee" shall mean a person working in a classified job for the Employer, eligible to receive benefits hereunder.

Article III.D.(1)(a) and (e) of the Employer's Benefit Plan provide:

Article III - Benefits

D. General Provisions

- (1) Continuation of Coverage
  - (a) Layoff

If an Employee ceases work because of layoff, continuation of health, life and accidental death and dismemberment: insurance coverage is as follows:

<u>Numbers of Hours Worked for the Employer in the 14 Consecutive Calendar Month Period Immediately Prior to the Employee's Date Last Period of Coverage Continuation Worked</u>	<u>from the Date Last Worked</u>
2,000 or more hours	Balance of month plus 12 months
500 or more but less than 2,000 hours	Balance of month plus 6 months
Less than 500 hours	30 days

(e) Quit or Discharge

If an Employee quits or is discharged, health, life and accidental death and dismemberment insurance coverage will terminate as of the date last worked.

Article XVII, Section (c) of the National Bituminous Coal Wage Agreement or 1981 provides:

(c) Layoff Procedure

In all cases where the working force is to be reduced or realigned, management shall meet with the mine committee at least 24 hours in advance and review the available jobs and the individuals to be laid off, retained or realigned.

Within five (5) days after an Employee is notified that he is to be laid off, he must fill out a standardized form and submit it to mine management. On this form, the laid-off Employee shall list: (1) his years of service at the mine; (2) his years of service with the Employer; (3) his previous mining experience with other Employers and the years of service with each; and (4) the jobs he is able to perform and for which he wishes to be recalled. Additionally, the Employee may also list, on the standardized form, (5) the mines of his Employer within the UMWA district on whose panel he wishes his name to be placed; (6) his choice of mines of his Employer located in one additional geographically contiguous UMWA district on whose panel he wishes his name to be placed.

Upon receipt of the completed form, the Employer shall within seven calendar days, distribute a copy of the completed form to the Recording Secretary of the Employee's local union and to the respective panel custodians of all mines listed by the Employee at mines where he wishes his name to be placed on the panel in accordance with the provisions of this section.

#### Discussion

Under Article III.D. of the Employer's Benefit Plan, the amount of continuation of benefits coverage provided to a laid-off miner is based on the number of hours worked for the Employer during the twenty-four month period immediately prior to his last date worked. Where, as here, the right to and the amount of a benefit are based on past service, the benefit is considered an accrued benefit. An accrued benefit may only be withheld by an Employer on the basis of express language in the benefit contract specifying the conditions under which the benefit will be forfeited.

The Respondent claims that an Employee on layoff who fails to submit a panel form within the time frame required in the seniority provisions of Article XVII of the 1981 Wage Agreement forfeits his right to continuation of health benefits coverage. Neither the Employer's Benefit Plan nor the 1981 Wage Agreement, however, expressly provides that failure to submit a mine panel form within the required time period will result in the termination of continuation of benefits coverage. Therefore, the Respondent improperly terminated the Complainants' benefits coverage.

#### Opinion of Trustees

It is the opinion of the Trustees that the Respondent is responsible for the continuation of benefits coverage for the Complainants for the period specified in Article III.D. (1) (a).